BORA LASKIN LAW LIBRARY
3 1761 09569083 0

UNIVERSITY OF TORONTO
FACULTY OF LAW

Copyright, Trademarks, and Patent Winter 2015

c.1 v.1

Copyright

Professor Abraham Drassinower

Storage

KE
2799
.D73
2015
[v.1]
c.1

BORA LASKIN LAW LIBRARY

JAN 12 2015

FACULTY OF LAW
UNIVERSITY OF TORONTO

Copyright, Trademarks, and Patent
Winter 2015

Copyright

Professor Abraham Drassinower

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/copyrighttradema01dras_1

Table of Contents

I. Introduction

Compo Co. Ltd. v Blue Crest Music Inc. et al., (1979) 105 DLR 3d (SCC).....1

Bishop v Stevens, (1990) 72 DLR 4th 97 (SCC).....1

II. Prerequisites for Copyright

A. Originality

Walter v Lane [1900] AC 539 (HL).....2

University of London Press, Limited v University Tutorial Press, Limited, [1916] 2 Ch 601.....14

Kilvington Bros. Ltd. v Goldberg et al., (1957) 8 DLR (2d) 768.....16

Feist Publications, Inc. v Rural Telephone Service Co., Inc., (1991) 499 US 340.....19

CCH Canadian Limited v The Law Society of Upper Canada, [2004] SCJ No 12 (paras 1 to 36).....33

Meshwerks, Inc. v Toyota Motor Sales U.S.A., et al. 528 F 3d 1258 (10th Cir 2008).....56

R. v Commodore Allen, [2006] AJ No 411 (Alberta Prov Court).....68

B. Idea/Expression Dichotomy

Nichols v Universal Pictures Corporation et al., 45 F 2d 119 (2d Cir 1930).....77

Moreau v St. Vincent, [1950] 3 DLR 713 (Exch Ct of Canada).....82

Deeks v Wells, [1931] OR 818.....88

C. Merger

Frank Morrissey v The Proctor & Gamble Company, 379 F 2d 675 (1st Cir 1967).....89

Herbert Rosenthal Jewelry Corp. v Edward and Lucy Kalpakian, 446 F. 2d 738 (1971).....91

Delrina Corp. v Triolet Systems Inc., (1993) 47 CPR 3d 1 (Ont Ct Gen Div).....95

Delrina Corp. v Triolet Systems Inc., (2002) 58 OR (3d) 339 (ONCA).....96

D. Fixation

Canadian Admiral Corporation, Ltd. v Rediffusion, Inc., (1954) 20 CPR 75 (Exch Ct of Canada).....97

Gould Estate v Stoddart Publishing Co., (1996) 30 OR (3d) 520 (Ont Ct Gen Div).....98

III. Ownership

Gould Estate v Stoddart Publishing Co., (1998) 39 OR (3d) 545 (ONCA).....101

Donoghue v Allied Newspapers Ltd., [1937] 3 All ER 503.....108

IV. Subject Matter

Baker v Selden, 101 US 99 (1879).....113

Hollinrake v Truswell [1894] 3 Ch 420 (CA).....118

Cuisenaire v South West Imports Ltd. [1969] SCR 208.....123

Exxon Corp. v Exxon Insurance Consultants International Ltd. [1982] 1 Ch 119 (CA).....127

Apple Computer, Inc. v Mackintosh Computers Ltd. (1990), 71 DLR (4th) 95 (SCC).....132

V. Infringement

A. Establishing Infringement

Francis Day & Hunter, Ltd v Bron (Trading as Delmar Publishing Co.) [1963] 1 Ch 587 (CA).....136

Boutin v Bilodeau (1992) 46 CPR (3d) 395 (Que CA).....151

Boutin v Bilodeau (1994) 54 CPR (3d) 160 (SCC).....154

B. Reproduction

Hawkes and Son (London) Limited v Paramount Film Service, Limited [1934] 1 Ch 593 (CA) 155

King Features Syndicate, Inc. v O. and M. Kleeman, Ltd. [1941] AC 417 (HL).....161

Computer Associates International, Inc. v Altai, Inc., 982 F 2d 693 (2d Cir 1992).....165

Delrina Corp. v Triolet Systems Inc. (2002), 58 OR (3d) 339 (ONCA).....189

Theberge v Galerie D'Art du Petit Champlain Inc. [2002] 2 SCR 336.....193

Robertson v Thomson Corp. [2006] 2 SCR 363.....229

Cinar Corporation v Robinson 2001 SCC 73.....249

C. Performance in Public

CCH Canadian Limited v The Law Society of Upper Canada, [2004] SCJ No 12 [paras 77 to 79 (communication to the public)].....261

Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 34.....262

Rogers Communications Inc. v Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 35.....290

D. Authorization

CCH Canadian Limited v The Law Society of Upper Canada, [2004] SCJ No 12 [paras 37 to 46].....312

Society of Composers, Authors and Music Publishers of Canada v Canadian Association of Internet Providers [2004] SCJ No 44.....315

BMG Canada Inc. v Doe (2005) FCA 193.....318

E. Secondary Infringement

CCH Canadian Limited v The Law Society of Upper Canada, [2004] SCJ No 12 [paras 80-82].....33

Euro-Excellence v Kraft Canada Inc. [2007] 3 SCR 20.....324

VI. User Rights, Fair Dealing, Fair Use

Hubbard v Vosper [1972] 2 QB 84 (CA).....356

Allen v Toronto Star Newspaper Ltd. (1997) 78 CPR (3d) 115.....362

CCH Canadian Limited v The Law Society of Upper Canada, [2004] SCJ No 12 [paras 47 to 76 (fair dealing)].....371

Society of Composers, Authors, and Music Publishers of Canada v Bell Canada, (2012) SCC 36.....379

Alberta (Education) v Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37.....388

Luther R. Campbell aka Luke Skyywalker, et al. v Acuff-Rose Music, Inc., 510 US 569 (1994).....401

Leslie A. Kelly v Arriba Soft Corp., 336 F 3d 811 (9th Cir 2003).....421

VII. Moral Rights

Snow v The Eaton Centre Limited et al. (1982), 70 CPR (2d) (Ont H Ct J).....431